IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9404 OF 2004

1) Union of India, through
The Secretary
Ministry of Finance
Department of Revenue,
North Block,
Mew Delhi

2) The Chairman,
Central Bureau of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi .....Petitioners.

V/s

G.S. Suryawanshi
Deputy Commissioner of
Income-tax, Dhule
At present residing at
12, Shivram Nagar,
Near St. Joseph School,
Jalgaon. .....Respondent.

Mr. V.S. Masurkar i/b S.S. Sarkar for the petitioners.
Mr. R.L. Nerlekar for the respondent.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE : 15th June, 2006

ORAL JUDGMENT : (Per V.M. Kanade, J.)

1. By this petition, petitioner - Union of India is challenging the order dated 26/3/2004 passed by the Central Administrative Tribunal, Mumbai in Original Application No. 677 of 2003. The Central Administrative Tribunal (For short "CAT") by the said

order allowed the application which is filed by the respondent and quashed the initiation of disciplinary proceedings against him.

2. Brief facts which are relevant for the purpose of deciding the present Writ Petition are as under:-

3. Petitioner had issued a charge-sheet to the respondent dated 13/5/2003, alleging therein that the respondent had committed misconduct and that he had failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of Government Servant. Respondent filed Original Application in the CAT for quashing and setting aside the charge-sheet which was served on him.

4. The case of the respondent is that he was working as an Assistant Commissioner of Income-tax in 1998 and was exercising powers in the capacity of Quasi Judicial Authority and had taken certain decisions with respect to grant of NOC. It was contended by the respondent in the Original Application that the said charge-sheet had been issued with malafide intention and the principal contention which was raised by the respondent was that the charge-sheet was bad in law since the applicant could not have been issued the

charge-sheet while he exercised his powers as Quasi Judicial Authority. The CAT held that no case for initiation of disciplinary proceedings against the applicant was made out. It further held that the respondent had issued NOC after he had scrutinized the documents such as cash-books, report of Income-tax Inspector and, thereafter, had issued the NOC.

5. The learned Counsel appearing on behalf of Union of India submitted that the Supreme Court in the case of Union of India and others V/s K.K.Dhawan reported in **1993 SCC (L&S) 325 = (1993) 2 SCC 56** has held that the Tribunal had no jurisdiction to examine the correctness of the charge particularly at the stage of framing of the charge. It is further submitted that the same view had been taken by the Supreme Court in the case of Union of India and Others Vs. Upendra Singh reported in **1994 SCC (L&S) 768 = (1994) 3 SCC 357.** He submitted that the Tribunal had erred in relying on the decision of the Supreme Court in the case of Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others, reported in **1999 SCC (L&S) 1299 = AIR 1999 SC 2881.**

6. The learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the

respondent, as a Quasi Judicial Authority, had passed the order granting NOC to the assessee and merely because such an order was passed that could not be the basis of charge of misconduct. It is submitted that there was no reason to interfere with the order passed by the Tribunal. It is submitted that the Upendra Singh's case cited by the Union of India has been considered by the Supreme Court in Zunjarrao's case.

7. We have given our anxious consideration to the submissions made by the learned Counsel appearing on behalf of the petitioners and the learned Counsel appearing on behalf of the respondent. In our view, the Tribunal clearly erred in examining the correctness of the charge-sheet and more particularly at the stage of framing of the charge. In our view, the said exercise is beyond the jurisdiction of the Tribunal. We are fortified in our view by the ratio laid down by the Apex Court in the case K.K. Dhawan (Supra) and in the case of Upendra Singh (Supra). In the case of Zunjarrao (supra), the facts before the Supreme Court were whether the decision to initiate the departmental inquiry was taken on indefinite information and, under the circumstances, the Supreme Court held that the suspicion could not form the basis for disciplinary proceedings and further held that

there must exist reasonable basis for Disciplinary Authority to proceed against the employee. The ratio of the said judgment in the case of Zunjarrao (supra), therefore, will not apply to the facts of the present case.

8. Under the circumstances, the order passed by the Tribunal is quashed and set aside. Writ Petition is allowed in terms of prayer clause (a). Rule is made absolute in the above terms with no order as to costs.

9. Petition is accordingly disposed of.

(V.G.PALSHIKAR, J.)

(V.M. KANADE, J.)